

## FLSA EXEMPT TEST

Federal law provides that employees may be exempt from the overtime wage provisions of the Fair Labor Standards Act in one of three general categories: EXECUTIVE, ADMINISTRATIVE and PROFESSIONAL.

In order for an employee to qualify as being EXEMPT and thus not be required to be paid at one and one-half his or her regular salary, an employee need only qualify under one of the following exempt categories.

INSTRUCTIONS - Please answer the following questions in each of the three categories.

1. EXECUTIVE - To be considered for being classified as an EXEMPT executive employee, an employee must be paid a weekly salary of \$455 or above; have duties which consist of management of a company or customarily recognized department or subdivision, regularly supervise and direct two or more employees, and must have authority to hire or fire other employees or suggestions as to such are given particular weight.

Questions: 1. Does the employee's primary duty consist of managing a department or subdivision, which has a permanent status and continuing function?  
Please read the following definitions and examples before answering;

Primary duty means the principal, main, major or most important duty that the employee performs. Consider the following factors.

- a. The relative importance of the exempt duties as compared with other types of duties
- b. The amount of time spent performing exempt work (usually employees who spend more than 50% of their time performing exempt work will satisfy the primary duty requirement but this amount of time is not required).
- c. The employee's relative freedom from direct supervision
- d. The relationship between the employee's salary and the wages paid to other non-exempt workers for the same kind of nonexempt work.
- e. Other \_\_\_\_\_

Consider the following examples of management activities and circle any that are applicable to the employee;

- a. Activities related to supervising employees such as interviewing, selecting, and training of employees
- b. Setting and adjusting pay rates and work hours
- c. Conducting performance appraisals
- d. Handling employee complaints and grievances
- e. Disciplining employees
- f. Functions related to running or servicing a business such as determining the merchandise to be bought, stocked and sold
- g. Planning and controlling the budget
- h. Monitoring or implementing legal compliance measures
- i. Other \_\_\_\_\_

Please circle: ☐ YES ☐ NO

2. Does the employee customarily and regularly direct the work of two (2) or more full time employees?

☐ YES ☐ NO

3. Does the employee have the authority to hire and fire employees or are the employee's recommendations regarding hiring and firing and advancement (such as reclassifications and promotions) given particular weight?

The following factors should be considered when determining whether an employee's suggestions are given particular weight;

- a. Whether it is part of the employee's job duties to make suggestions and recommendations
- b. The frequency with which suggestions and recommendations are made or requested
- c. The frequency with which the employee's suggestions and recommendations are relied upon
- d. The exempt executive need not have authority to make the ultimate decision. Suggestions and recommendations may be reviewed by a higher level manager
- e. Making an occasional suggestion regarding a change in status of a co-worker does not meet the "particular weight" standard

☐ YES ☐ NO

4. Does an employee make their own decision about when to perform duties not listed above while still remaining responsible for the success or failure of business operations?

☐ YES ☐ NO

2. ADMINISTRATIVE - To be considered for being classified as an EXEMPT administrative employee, an employee must be paid a weekly salary of \$455 or above; the employee's primary duty is to perform office or non-manual work related to the management policies or general business operations of the employer or the employer's customers; and performs duties that require the exercise of discretion and independent judgement. (As defined in 29 CFR 541.207 (a) this implies that the employee has the authority or power to make an independent choice, free from immediate direction or supervision, with respect to matters of significance.) THIS IS THE MOST DIFFICULT PART OF THE EXEMPTION TO DEFINE. EXERCISE CAUTION IN ANSWERING QUESTIONS RELATING TO THIS DEFINITION!

1. Does the employee perform work that is directly related to assisting with the running of the business or act as advisors or consultants to their employer's clients or customers?

☐ YES ☐ NO

2. Does the employee customarily and regularly exercise discretion and independent judgment?  
Consider and circle applicable factors in determining whether an employee exercises discretion and independent judgment before answering yes or no.
- a. Employee has the authority to make an independent decision free from immediate supervision after comparing and evaluating possible courses of action. Note: An employee can meet this requirement even if their decisions are reviewed and occasionally reversed at a higher level.
  - b. Has authority to formulate, affect, interpret, or implement management policies or operating practices.
  - c. Carries out major assignments in conducting the operations of the business.
  - d. Performs work that affects business operations to a substantial degree.
  - e. Has authority to commit the employer in matters that have significant financial impact.
  - f. Has authority to waive or deviate from established policies and procedures, without prior approval.
  - g. Has authority to negotiate and bind the company on significant matters.
  - h. Provides consultation or expert advice to management; is involved in planning long- or short-term business objectives.
  - i. Investigates and resolves matters of significance on behalf of management.
  - j. Whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.
  - k. Other \_\_\_\_\_
- ☐ YES                      ☐ NO

3. Does an employee make their own decision about when to perform duties not listed above while still remaining responsible for the success or failure of business operations?
- ☐ YES                      ☐ NO

3. PROFESSIONAL - To be considered for being classified as an EXEMPT professional employee, an employee must be paid a weekly salary of \$455 or above; have duties requiring advanced or very specialized education and training and require the exercise of discretion and judgement, or; consist of work requiring invention, imagination or talent in a recognized field of artistic or creative endeavor.

1. Does the employee's primary duty consist of work requiring knowledge of an advanced type in a field of science or learning acquired by a prolonged course of specialized intellectual instruction as distinguished from a general academic education? Or; does the employee's work require the use of creativity, invention, or imagination in a recognized field of artistic endeavor?  
Consider the following factors and definitions before answering yes or no;

- a. “Advanced knowledge” means work that is predominately intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment.
- b. An exempt professional employee generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances.
- c. Advanced knowledge cannot be attained at the high school level.
- d. “Prolonged course of specialized intellectual instruction” means that the learned professional exemption is limited to professions where specialized, academic training is a standard prerequisite for entering the profession.

☐ YES ☐ NO

2. Is the employee's work predominantly intellectual and varied in character rather than routine mental, manual, mechanical or physical work?

☐ YES ☐ NO

3. Does an employee make their own decision about when to perform duties not listed above while still remaining responsible for the success or failure of business operations?

☐ YES ☐ NO